

REDLINE VERSION –MANAGEMENT RECOMMENDATIONS (8/04) ON RETAINER AGREEMENTS

Definitions

Management recommends the amending the definitions section, Section 1611.2, Definitions, to add new definitions relating to the retainer agreement requirement at (a), (b), (e) and (f):

Section 1611.2 Definitions.

(a) “Advice and counsel” means legal assistance that is limited to the review of information relevant to the client’s legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) “Applicable rules of professional responsibility” means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

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(e) “Brief services” means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) “Extended service” means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client’s interest beyond advice and counsel or brief services.

Retainer Agreements

Management proposes revising the existing retainer agreement provision as follows (please note that the revised section on retainer agreements would be renumbered because of other proposed changes to other sections of the rule):

Section 1611.87 Retainer agreements.

(a) ~~When a recipient provides extended service to a client, the~~ A recipient shall execute a written retainer agreement ~~with the client, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement shall be executed when representation commences (or, if not possible owing to an emergency situation, as soon thereafter as is practicable),~~ Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, ~~and shall clearly~~ a statement identifying the matter legal problem for in which representation is sought, ~~and the nature of the legal services to be provided, and the rights and responsibilities of the client. The recipient shall retain the executed retainer agreement as part of the client's file, and shall make the agreement available for review by the Corporation in a manner which protects the identity of the client.~~

(b) (1) Except as provided herein, when a recipient provides brief services to a client, the recipient shall provide some written documentation to the client setting forth the scope of the representation.

(2) No written communication concerning the scope of services need be provided when doing so would jeopardize the safety of the client. The recipient shall keep a record of the information provided, that the information was provided to the client orally, and the reason it was necessary to provide the information orally.

(3) The written communication required under this paragraph may be provided after services have been provided to the client.

(b) A recipient is not required to execute a written retainer agreement or provide written documentation setting forth the scope of representation when

~~the only service to be provided~~ing is brief advice and ~~consultation~~ counsel to the client.

(d) When a recipient makes a referral to a private attorney pursuant to the recipient's PAI program, the recipient shall provide a written referral notice to the person being referred which includes a statement indicating the legal problem for which representation is being sought, that the person has been referred to a private attorney who is not an employee of the recipient and that no further attorney-client relationship exists between the person being referred and the recipient.

(e) The recipient shall maintain copies of all retainer agreements and other documentation generated in accordance with this section.